



## STATE BOARD OF LAND COMMISSIONERS

Philip E. Batt, Governor and President of the Board  
Pete T. Cenarrusa, Secretary of State  
Alan G. Lance, Attorney General  
J. D. Williams, State Controller  
Anne C. Fox, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

### MINUTES REGULAR LAND BOARD MEETING FEBRUARY 10, 1998

The regular meeting of the Idaho State Board of Land Commissioners was held on February 10, 1998, in Boise, Idaho. The Honorable Philip E. Batt presided. The following members were present.

Honorable Secretary of State Pete T. Cenarrusa  
Honorable Attorney General Alan G. Lance  
Honorable State Controller J.D. Williams  
Honorable Superintendent of Public Instruction Anne C. Fox

Secretary to the Board Stanley F. Hamilton

The meeting convened at 9:10 AM and adjourned at 11:20 AM

### **CONSENT AGENDA**

The following Consent Agenda was approved in its entirety upon a motion by State Controller Williams and seconded by Attorney General Lance. The motion carried on a vote of 5-0.

1. The following official transactions were approved:

Bureau of Real Estate, Easement Section for December, 1997  
Bureau of Real Estate, Land Sale Section for December, 1997  
Bureau of Minerals for December, 1997  
Bureau of Range Management and Surface Leasing for Cropland, Grazing, Cottage Site, Miscellaneous, and Submerged Land Leases for December, 1997  
Timber Sales for the period December 25, 1997 through January 23, 1998

2. The applications for addition to the qualified bidders list, timber sales were approved as follows:

Northwest Associates, L.L.C.  
199 N. Capitol Blvd., Suite 502  
Boise, ID 83702  
P & O Inc.  
P.O. Box 43  
Moyie Springs, ID 83845

Idaho Panhandle Forestry  
1205 North Idaho Street  
Post Falls, ID 83854-8615  
Shawn Montee Timber Company  
6420 Seltice Way  
Post Falls, ID 83854

3. The following timber sales were approved:

A. Curtis-Cardiac	CR-3-0420	6,595 MBF
B. Fisher-Elk	CR-4-0658	6,000 MBF
C. Camas View	CR-4-0665	3,600 MBF
D. Tom Taha Pulp	CR-4-0678	2,430 MBF

4. The disclaimer of interest request from Sollie Callender for 1.28 acres of accretion land along the Payette River near Horseshoe Bend in Boise County was approved.
5. The disclaimer of interest request from Charles Lobdell on behalf of Whiskey Bottom Limited Partnership of Eagle, Idaho for 24.58 acres of accretion land along the Boise River near Parma in Canyon County was approved.
6. Placer Mining Permit No. 312, Steve L. Ferry, 5903 Davenport St., Dalton Gardens, ID 83815 was approved.
7. This retirement of reclamation plan 1257, AGI Construction, Inc., and forfeiture of Star Insurance Company reclamation bond SM4000190 in the amount of \$3,000.00 was approved.

## REGULAR AGENDA

8. Director's Report

Director Stan Hamilton presented the monthly Director's report. He provided a summary of the Endowment Fund Investment Board Annual Report for fiscal year 1997.

He also presented the Idaho Department of Lands contribution trend to the permanent endowment and income funds. The permanent fund contributions for FY 1998 currently total \$36.5 million. This lags approximately \$4 million behind revenue collections for the same period last year. Income fund contributions for FY 1998 also experienced a slow start. However, revenue collections in December bring the YTD total of \$6.1 million within \$110,000 of total receipts for the same period last year.

9. Conceptual approval request to initiate Capitol Park Plaza land exchange  
Presented by Perry Whittaker, Bureau Chief of Real Estate

Perry Whittaker provided the background information. This is a request for conceptual approval to initiate a proposed land exchange involving Payette Lake cottage site lessees and the Kristy Pigeon lease in Blaine County for commercial real estate in downtown Boise. Dick Barrell of W. G. Stollfus Company proposed this exchange. This approval would allow the department to begin work on this proposed exchange with the understanding that the proposal will be presented in the future for board final approval.

The law firm of Eberle, Berlin, Kading, Turnbow & McKlveen currently owns the downtown property. The law firm is interested in disposing of their property with a leaseback of the office space they currently use. The property consists of six (6) parcels encompassing 14 lots and comprising 1.95 acres, more or less. The parcels all lie along Bannock Street between 3<sup>rd</sup> and 6<sup>th</sup> streets.

Department staff concurs with including the Kristy Pigeon parcel and believes this would be a better exchange in which to include her than the one for timberland she is currently in.

Secretary of State Cenarrusa asked if the water rights had been transferred to Kristy Pigeon. Mr. Whittaker stated that the department anticipates that the water rights for that portion of property she would acquire would go with the property.

Controller Williams asked about the time frame for this exchange. Department staff anticipates a need for additional survey work to verify lot descriptions and possible encroachments on the state owned lease lots at Payette Lake. Survey work should be completed prior to appraisals. Because of the snow situation, it will likely be April before the survey work can begin. The appraisals would follow completion of the survey work. Mr. Whittaker stated that it could be back to the Land Board as early as May or June of this year for final approval. The department anticipates going ahead with the hearing process almost immediately to find out what concerns are out there.

The motion was made by Superintendent Fox and seconded by Secretary of State Cenarrusa to accept the recommendation of the board for conceptual approval to initiate the proposed land exchange involving Payette Lake cottage site leases and the Kristy Pigeon lease.

Attorney General Lance asked if the department has determined the environmental liability. Mr. Whittaker stated that the department had Public Works look at the 300 W. building and it was determined there wasn't any asbestos concern. There was an asbestos survey that was done for the 512 W. Bannock property by Envirosearch International after Public Works had looked at the property. They found four (4) small areas with asbestos containing material. The estimated cost for cleaning this up is \$1,250 - \$1,400.

The motion carried on a vote of 5-0.

10. Request for audience with the Board on a proposed option to obtain a long-term commercial lease  
Presented by Stan Hamilton, Director,  
Ronald Achs and Tim Harris

The department received a letter of intent from Mr. Ronald Achs and Mr. Tim Harris, both of Ketchum, Idaho and an Idaho Limited Liability Company (developer) proposing to secure a three-year lease option of 400 acres of state endowment lands located in the vicinity of Gowen and Pleasant Valley Roads south of the Boise airport.

Mr. Tim Harris was unable to attend the meeting. Mr. Ronald Achs stated that several weeks ago, they submitted a letter of intent to purchase an option on endowment land adjacent to the Boise Airport. The option would allow them needed time to determine the viability to develop the property on behalf of the endowment, given the fact that they would be able to negotiate a long-term lease with the land board. This would allow the endowment to benefit from the economic activity they feel they can bring to the area.

Mr. Achs stated that they intend to study the area and determine what type of development would best suit the area, which may include a shopping mall, hotels, premium restaurants, light industrial warehousing and other entertainment type facilities which may benefit the whole region. This is assuming a long-term lease arrangement can be made.

Superintendent Fox asked why it was necessary to obtain an option. She asked if this work could not be done without an option. Mr. Achs stated because it is not privately owned land, for them to put forth a great sum of money to do the due diligence work, they would like to secure an option so that their investment can benefit their development as well as present to the land board, a master plan for the project. If they invest the monies to this due diligence work, they want to maintain that they will have an assurance that they will be able to develop the property with a long-term lease.

Controller Williams stated that he liked the concept of doing something with these lands, however, he is not sure of the mechanics to do this. Attorney General Lance stated his concerns regarding legal issues. Mr. Achs said hopefully something can be worked out and a way found to be able to go forward with this option. Attorney General Lance said legal counsel could attempt to work with the attorneys in Mr. Achs' group on this issue. The members of the Land Board stated that they liked the concept and would like to find a way to work through this.

The motion was made by Attorney General Lance and seconded by Secretary of State Cenarrusa to direct staff and legal counsel assigned to staff to try to work with Mr. Achs to work through this to present a proposal to the Board if appropriate. The issue is to be presented at the next Land Board meeting. Motion carried on a vote of 5-0. The Governor stated that he is very much in favor of this concept, however, there are some difficulties to be worked through.

Attorney General Lance stated his concern about the Collins 80. He asked the department what was being done about leasing the home on this property and what was being done to lease the balance of the property. Bryce Taylor said that the department has not gone out and

conducted another significant advertising campaign. He said the home on the property has been rented on a month-to-month basis for \$1,000 per month. Attorney General Lance asked who reviewed the month-to-month rental agreement for legal sufficiency. Mr. Taylor stated that legal counsel did not review this. Attorney General Lance asked if he could have a copy of the lease. Mr. Taylor said this would be provided. Attorney General Lance stressed that the Land Board was paid to make decisions and the department was paid to manage.

Superintendent Fox stated that she had talked with the department staff following the briefing meeting and said she felt one of the department's problems is such a small staff with more work than they can accomplish. She suggested that the department come back to the board with a workload analysis and what they would project they need in help to get to some of the things the board is moving into. Attorney General Lance stated that these areas of expertise are out there to be utilized. Superintendent Fox said in her visits with the department 1.5 persons would be needed.

Governor Batt stated that he had long been concerned about the direction the board gave the department staff. He asked that the board subcommittee that meets make recommendations for improvement in staff operations. If the board is going to be a critic, there should be some way to improve the process. Attorney General Lance said this would be a good start. Governor Batt stressed that it is unfair to criticize staff if they are not given directions. Secretary of State Cenarrusa said he had observed the staff for many years and thinks they do a good job. He stated that each member had 20% of the vote – each board member is equal. If this means the vote is going to shift to the legal end, he stated he is against it. All board members agreed to have those on the briefing subcommittee work on this.

11. Cottage Site Subcommittee Report  
Presented by State Controller J.D. Williams

The report will cover the progress of the committee's development of appraisal instructions, an appeal process for lot valuation and market rent determination, and a hardship policy for persons who may not be able to pay rental. The Board may consider taking action to adopt proposed appraisal instructions at this meeting.

State Controller Williams stated that since the last full meeting of the Land Board on the cottage site issue with the lessees, there has been a working group comprised of members of department staff and lessees with their legal counsel, who have been looking at the various issues. After the working meeting, there was a Cottage Site subcommittee meeting on February 4, 1998. The subcommittee listened to the recommendations. At the subcommittee meeting, there was a question raised about certain language regarding how to determine the market rent for the leases.

The language that was proposed to the subcommittee by the lessees read as follows:

- 1. The MAI appraiser will be instructed to appraise each selected cottage site to determine**
  - i. Fee simple market value and**
  - ii. market rent of the Cottage Site subject to the lease (in essence the leased fee estate)**

The last language about market rent subject to the terms of the lease (in essence the leased fee estate) was where most of the discussion was held. In the appraisal books, there is a definition of a leased fee estate that when you first read it seems to indicate that it's what we're looking for. However, because of our prior discussions with this board regarding – is there a leasehold interest in these leases that is deducted from the value to determine what they would have to pay – like in the exchange process. In the Evergreen Exchange, we determined there is no value attributed to the lessees for their leasehold. We wanted to make sure that was clear in this appraisal process and the instructions that would be given to the appraiser. What was finally arrived at was this language:

- 1. The MAI appraiser will be instructed to appraise each selected cottage site to determine**
  - i. Fee simple market value and**
  - ii. Market rent of the Cottage Site under terms of the lease.**

The reason for using “under terms of the lease” is you always look at the lease that's being offered to see what you are getting.

Karl Vogt, Legal Counsel for the Superintendent of Public Instruction, stated that it was his understanding that the intent of the board was not to appraise the land based on any discounted rental rate that the current tenant has. If that is the case, then the way the instructions are written, and the way that the recommendation is written may confuse that issue.

The way the instructions are written currently is that market rent will be determined under the terms of the lease and that is correct. But one of the terms of the lease is, in fact, the lease payment and that creates a problem. Appraisal terms are very much terms of art and just like statutory terms they get interpreted very specifically. If it is the intent of the Land Board to not take into account the rental payment, then the instructions should be relatively clear.

State Controller Williams asked Mr. Vogt, if another phrase were added at the end; replace the period with a comma and state “excluding all provisions of the lease relating to payment terms”, would this be sufficient. Mr. Vogt said he felt this would assist in terms of contract interpretation.

State Controller Williams said he did not feel this would be objectionable to the lessees and their counsel. Mr. Chuck Hervey was present and will notify the lessees and their counsel of the proposed change.

State Controller Williams moved that the Land Board approve the recommendations, subject to review by the lessees and their counsel, in order for the department to give the instructions to the appraisers. Superintendent Fox seconded the motion. The motion carried on a vote of 5-0.

## **INFORMATION AGENDA**

The information agenda required no action.

12. Timber sale activity report
13. Interest rate update
14. Triumph Mine update
15. Quarterly Endowment Fund report

Motion was made by Superintendent Fox and seconded by Controller Williams to move into Executive Session to consider the Deer Flat National Wildlife Refuge issue. Motion carried on a vote of 5-0.

## **EXECUTIVE SESSION**

16. Deer Flat National Wildlife Refuge  
Presented by Clive Strong, Division Chief, Natural Resources Division, Office of the Attorney General

Following the Deer Flat National Wildlife Refuge issue in Executive Session, the Land Board returned to Regular Session to entertain the following motion.

Motion was made by Attorney General Lance to direct Mr. Strong to resolve the matter of Deer Flat ownership in a manner consistent with the proposed resolution and as discussed in Executive Session. The motion carried on a vote of 5-0.

There being no further business to be brought before the board, the meeting adjourned at 11:20 AM.



IDAHO STATE BOARD OF LAND COMMISSIONERS

*Philip E. Batt*  
COPY

President, State Board of Land Commissioners and  
Governor of the State of Idaho

*Pete T. Cenarrusa*  
COPY

Pete T. Cenarrusa  
Secretary of State



*Stanley F. Hamilton*  
COPY

Stanley F. Hamilton  
Director, Idaho Department of Lands